

Barbara Dunleavy, Esq.
Rosicki, Rosicki & Associates, P.C.
Main Office 51 E Bethpage Road
Plainview, NY 11803
516.741.2585

UNITED STATES BANKRUPTCY COURT Presentment Date: February 4, 2009
SOUTHERN DISTRICT OF NEW YORK Presentment Time: 12:00 PM

-----X

IN RE:

CASE NO.: 08-23565-ash

Luz Salazar,

Chapter: 7

DEBTOR. JUDGE: ADLAI S. HARDIN

-----X

**NOTICE OF PRESENTMENT OF ORDER GRANTING RELIEF
FROM AUTOMATIC STAY AND OPPORTUNITY FOR HEARING**

SIRS:

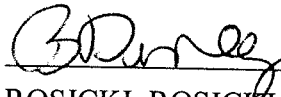
PLEASE TAKE NOTICE that pursuant to Bankruptcy Rule 4001, 11 U.S.C. 105(a), 11 U.S.C. 362(d)(1) and 11 U.S.C. 362(d)(2), Wells Fargo Bank, NA as Trustee seeks relief from the automatic stay as to the property located at 195 Fisher Avenue, White Plains, NY 10606, and will present the annexed proposed order for signature to the Honorable Adlai S. Hardin at the United States Bankruptcy Court located at 300 Quarrapos Street, White Plains, NY 10601, on January 30, 2009 at 12:00 PM (the "Presentment Date").

PLEASE TAKE FURTHER NOTICE that, unless written objection to the entry of the order is received by the undersigned and the clerk of the court at least five (5) days prior to the Presentment Date, the order will be entered as unopposed.

PLEASE TAKE FURTHER NOTICE that in the event objections are received as
aforementioned, then in such event a hearing on the application for relief from the automatic stay
will be held on: February 17, 2009 at 9:45 a.m.

Dated: January 21, 2009
Plainview, NY

Respectfully submitted,



ROSICKI, ROSICKI & ASSOCIATES, P.C.
By: Barbara Dunleavy, Esq.
Attorneys for Movant
Main Office 51 E Bethpage Road
Plainview, NY 11803
516.741.2585

TO:

Luz Salazar
Debtor
44 Church Street, Apt 1A
New Rochelle, NY 10801

Linda Tirelli, Esq.
Attorney for Debtor
Westchester Legal Credit Solutions Inc.
202 Mamroneck Avenue
3rd Floor
White Plains, NY 10601

Mark S. Tulis, Esq.
Trustee
Oxman, Tulis, Kirkpatrick, Whyatt, & Geiger, LLP
120 Bloomingdale Road
White Plains, NY 10605

U.S. Trustee
33 Whitehall Street
21st Floor
New York, NY 10004

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

IN RE:

Luz Salazar,

DEBTOR.

CASE NO.: 08-23565-ash

Chapter: 7

JUDGE: ADLAI S. HARDIN

-----X

**ORDER GRANTING RELIEF
FROM THE AUTOMATIC STAY**

UPON consideration of the application of Wells Fargo Bank, NA as Trustee ("Movant"), dated January 21, 2009, and no opposition appearing thereto; and it having been determined that Movant is entitled to relief from the automatic stay under Bankruptcy Rule 4001, 11 U.S.C. 105(a), 11 U.S.C. 362(d)(1) and 11 U.S.C. 362(d)(2), it is hereby

ORDERED that the application of Movant is granted modifying the automatic stay with respect to the property located at 195 Fisher Avenue, White Plains, NY 10606, (the "Premises") to the extent necessary to allow Movant, its successors and/or assigns to commence and/or continue foreclosure and eviction proceedings on the Premises; and it is further

ORDERED that Movant shall serve a copy of the referee's report of sale upon the case trustee, and the trustee shall receive notice of any surplus monies that may exist after the sale; and it is further

ORDERED that the stay invoked pursuant to F.R.B.P. 4001(a)(3) is waived and this order is effective upon the signing of this order.

Dated: , 2009
 , New York

Hon. Adlai S. Hardin
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE:

Luz Salazar

Debtor.

ORDER GRANTING RELIEF FROM STAY

ROSICKI, ROSICKI & ASSOCIATES, P.C.
Attorneys for Movant
Main Office 51 E Bethpage Road
Plainview, NY 11803
516.741.2585

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

IN RE:

Luz Salazar,

DEBTOR.

-----X

CASE NO.: 08-23565-ash

Chapter: 7

JUDGE: ADLAI S. HARDIN

**AFFIRMATION IN SUPPORT OF AN ORDER
MODIFYING AND TERMINATING THE AUTOMATIC STAY**

TO: THE HONORABLE ADLAI S. HARDIN
UNITED STATES BANKRUPTCY JUDGE:

The Application of Wells Fargo Bank, NA as Trustee ("Movant"), by its attorneys,
Rosicki, Rosicki & Associates, P.C., respectfully represents and says:

Barbara Dunleavy, Esq., an attorney at law duly admitted to practice before this Court
and the Courts of the State of New York, hereby affirms the following to be true under penalty of
perjury:

I. RELIEF REQUESTED

1. This is a contested matter brought pursuant to Federal Rules of Bankruptcy Procedure, Rules 4001, 9013 and 9014 and Sections 361, 362(d) of Title 11 of the United States Code, 11 U.S.C. Section 101 et. seq. (the "Bankruptcy Code"), for an Order: (i) modifying and terminating the automatic stay to permit Movant to exercise all of its rights and remedies with respect to certain collateral known as 195 Fisher Avenue, White Plains, NY 10606, (the "Premises"), (ii) waiving the ten (10) day stay pursuant to F.R.B.P. 4001(a)(3), and (iii) granting Movant such other and further relief as the Court deems just and proper.

II. BACKGROUND

2. Movant is the holder, by assignment, of a Note and Mortgage, dated June 8, 2005, given by Luz Salazar (the "Debtor") in the original principal amount of \$535,200.00 pledging the Premises as security. Copies of the Note, Mortgage and Assignment are annexed hereto as Exhibit "A".

3. On October 27, 2008, the Debtor filed with the Clerk of this Court a petition for relief under Chapter 7 of the Bankruptcy Code.

4. As required by S.D.N.Y. Administrative Order #347, and pursuant to Local Bankruptcy Rule 4001-1 and 4001-2, the completed motion for relief Worksheet and Declaration (the "Worksheet") dated January 7, 2009 is attached hereto as Exhibit "B".

5. Based upon information provided by Movant, the Debtor is in contractual default under the terms of the Note and Mortgage for failure to make timely payments in the amount of \$4,586.39 for the October 1, 2007 payment and the November 1, 2007 payment each, \$5,193.43 for the December 1, 2007 payment and the January 1, 2008 payment each, \$5,557.34 for the February 1, 2008 payment through and including the July 1, 2008 payments each, and \$5,384.64 for the August 1, 2008 payment through and including the January 1, 2009 payments each and the loan is contractually due for October 1, 2007.

6. That by failing to make mortgage payments, the Debtor has failed to provide Movant with adequate protection for its security, entitling Movant, its successors and/or assigns, to relief from the automatic stay.

7. Additionally, there is insufficient equity in the Premises.

8. As reflected in the Worksheet, Movant's total lien on the Premises is approximately \$590,196.54.

9. As reflected in the Worksheet, the Premises has an estimated value of \$500,000.00. A copy of the Schedule A is attached hereto as Exhibit "C".

10. Based on the foregoing, it is evident that Debtor does not maintain equity in the Premises. Consequently, Movant is entitled to relief from the stay pursuant to Section 362(d)(2)(A) of the Bankruptcy Code.

11. That for the reasons stated above, the Debtor has failed to adequately protect the interest of Movant, causing Movant irreparable harm and injury.

12. Furthermore, the Debtor has indicated his desire to surrender the premises. A copy of the Debtors' Statement of Intention is annexed hereto as Exhibit "D".

13. Additionally, by seeking relief under Chapter 7, Debtor is not seeking to reorganize and thus, the Premises is not necessary for a successful reorganization. Therefore, relief from stay is warranted pursuant to Section 362(d)(2).

14. Waiver of the stay invoked pursuant to F.R.B.P. 4001(a)(3) is sought so that Movant, its successors and/or assigns can immediately proceed with the foreclosure action and/or eviction proceeding.

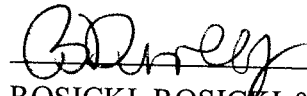
IV. CONCLUSION

14. Relief from the stay is warranted under Section 362(d). Accordingly, the automatic stay must be modified to permit Movant to assert its rights in the Premises, including, but not limited to, the consummation of a foreclosure sale and eviction proceeding.

WHEREFORE, Movant respectfully requests that an Order be granted modifying the automatic stay as to it, its successors and/or assigns, permitting maintenance of a mortgage foreclosure action and eviction proceeding with respect to the Premises; waiving the stay invoked pursuant to F.R.B.P. 4001(a)(3); and for such other and further relief as the Court may deem just and proper.

Dated: January 21, 2009
Plainview, NY

Respectfully submitted,

A handwritten signature in cursive script, appearing to read 'B Dunleavy', is written over a horizontal line.

ROSICKI, ROSICKI & ASSOCIATES, P.C.
By: Barbara Dunleavy, Esq.
Attorneys for Movant
Main Office 51 E Bethpage Road
Plainview, NY 11803
516.741.2585

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

X

IN RE:

Luz Salazar,

CASE NO.: 08-23565-ash

Chapter: 7

DEBTOR.

AFFIDAVIT OF SERVICE

-----X
STATE OF NEW YORK)

) ss:

COUNTY OF NASSAU)

Catherine Jones, being duly sworn, deposes and says:

I am not a party to this action, am over 18 years of age and reside in Nassau County, New York.

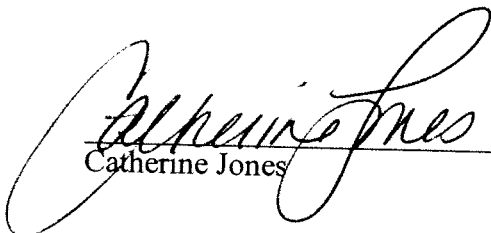
On January 21, 2009, I served the within Notice of Motion, Motion for Modification of the Automatic Stay and Proposed Order Granting Relief from the Automatic Stay on the following parties, by depositing a true copy thereof in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State, addressed to each of the following persons at the last known address set forth after each name:

Luz Salazar
44 Church Street, Apt 1A
New Rochelle, NY 10801

Linda Tirelli, Esq.
Westchester Legal Credit Solutions Inc.
202 Mamroneck Avenue
3rd Floor
White Plains, NY 10601

Mark S. Tulis, Esq.
Oxman, Tulis, Kirkpatrick, Whyatt, & Geiger, LLP
120 Bloomingdale Road
White Plains, NY 10605

U.S. Trustee
33 Whitehall Street
21st Floor
New York, NY 10004


Catherine Jones

Sworn to before me this
21st day of January, 2009


NOTARY PUBLIC

Rose Saranago
Notary Public State of New York
No. 01SA6163060
Qualified in Suffolk County
Commission expires March 19, 20 11

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE:

Luz Salazar,

Debtor.

**NOTICE OF PRESENTMENT AND APPLICATION
IN SUPPORT OF ENTRY OF AN ORDER VACATING STAY**

ROSICKI, ROSICKI & ASSOCIATES, P.C.
Attorneys for Movant
Main Office 51 E Bethpage Road
Plainview, NY 11803
516.741.2585

NOTICE OF MOTION COVER SHEET

NAME OF DEBTOR

Luz Salazar

CASE NUMBER

08-23565-ash

PLAINTIFF/MOVANT

Wells Fargo Bank, NA as Trustee

DEFENDANT/RESPONDENT

ATTORNEYS

Rosicki, Rosicki & Associates, P.C.

Main Office 51 E Bethpage Road
Plainview, NY 11803

PRINT NAME OF ATTORNEY

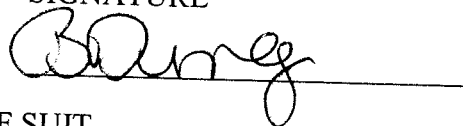
Barbara Dunleavy, Esq.

ATTORNEYS IF KNOWN

Linda Tirelli, Esq.

202 Mamroneck Avenue
3rd Floor
White Plains, NY 10601

SIGNATURE



NATURE OF SUIT

(Check all Boxes That Apply to This Motion)

- ☒ To Grant Relief from the Automatic Stay
11 U.S.C. Section of 362(d) (\$150.00 fee required)
- ☐ To Withdraw the Reference of a Case
11 U.S.C. Section 157(d) (\$75.00 fee required)
- ☐ To Compel Abandonment of Property
of the Estate - B.R. 6007 (b) (\$75.00 fee required)
- ☐ To Convert (fee not required)
- ☐ To Dismiss (fee not required)
- ☐ To Assume/Reject (fee not required)
- ☐ To Extend Time to Object to Discharge/Dischargeability
- ☐ To Extend Exclusivity Period to File Plan, Etc.
- ☐ Objections to Claims
- ☐ For Summary Judgment
- ☐ Other- Specify Type of Motion _____

FILING FEE (Check One)

☐ Fee Attached

☒ Fee Paid On Line

ROSICKI, ROSICKI & ASSOCIATES, P.C.

ATTORNEYS AT LAW

Main Office: 51 East Bethpage Road

Plainview, New York 11803

Telephone (516) 741-2585

Facsimile (516) 873-7243

We are a debt collector and are attempting to collect a debt.

Any information obtained may be used for that purpose.

January 21, 2009

United States Bankruptcy Court
Southern District of New York
300 Quarropas Street
White Plains, NY 10601

Re: Debtor: Luz Salazar
Bankruptcy Case No.: 08-23565-ash
Chapter 7

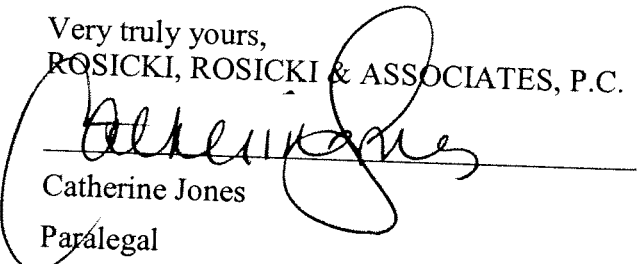
Dear Sir or Madam:

Enclosed herewith you will one chambers copy of a Notice of Presentment of an Order seeking Relief from Automatic Stay and Opportunity for Hearing and one separate copy of a proposed order along with a diskette in Word format. The appropriate filing fee in the amount of \$150.00 has been paid online.

Please file this Order with the Court as it is scheduled for signature on February 4, 2009 at 12:00 pm.

Your assistance is greatly appreciated

Very truly yours,
ROSICKI, ROSICKI & ASSOCIATES, P.C.


Catherine Jones

Paralegal

Enclosures